

UTU-66354
UT08438

March 17, 1995

S/047/048

CERTIFIED MAIL
Return Receipt Requested
Z 413 577 402

DECISION

Mr. Joseph LaStella	:	43 CFR 3809, Establishment
P.O. Box 70689	:	of a Record of Noncompliance
West Valley City, UT 84170	:	and Bond Required

A mining notice was received on February 9, 1987, by operator, Searle Brothers Construction, Inc., of Evanston, Wyoming, for testing placer gravel deposits on Sno-Ben #1-6 mining claims. A letter dated June 10, 1988, was sent to Mr. Bennett, one of the mining claimants of record, stating measures were necessary to reclaim the wash plant location on Sno-Ben #1 in order to move the wash plant to Sno-Ben #2. These reclamation measures included filling two water pits, leveling earthen ramps, removing a plastic liner, removing all trash, regrading to original contour, and reseeding all disturbed areas. Another notice was submitted on June 14, 1988, by Overlook Limited, Inc., for mining operations on Sno-Ben #2.

A notice of noncompliance was issued on June 27, 1988, for failure to complete reclamation work on the wash plant area, failure to file a complete notice, and failure to wait 15 days prior to commencing mining activity prior to acceptance. Additional information was filed by Overlook Mining, Inc., but it did not address the items listed as insufficient on the June 27 notice of noncompliance. Another notice of noncompliance was issued on July 20, 1988. This notice of noncompliance was issued because mining activity continued prior to resolution of items listed in the June 27, 1988, notice of noncompliance.

A field inspection on August 3, 1988, revealed successful completion of earthwork on Sno-Ben #1; however, seeding was still necessary. A letter, dated November 16, 1988, from the Vernal District Manager to Mr. Bennett, indicated work had exceeded the area identified on the accepted notice. You, as site manager, submitted a notice on July 17, 1989.

A January 2, 1990, letter to you requested reclamation of all disturbances caused by you (filling in eight test pits, removing the trailer, reshaping disturbances to natural contour, reseeding, etc.) and an amended notice to address existing disturbances not previously reviewed and accepted. This work was never completed

and therefore resulted in a notice of noncompliance being issued to you dated March 30, 1990. This letter was returned unclaimed. On April 30, 1990, another letter reiterated the decision, stating the reclamation should be completed within 30 days from receipt. The decision was resent again on August 6, 1990, requiring reclamation of the site. Another notice of noncompliance was issued on December 5, 1990. BLM law enforcement personnel were used to deliver the letter to you. On January 28, 1991, the Utah Division of Oil, Gas, and Mining directed you to reclaim the site no later than 60 days from that date. The removal of the trailer and associated waste was timely completed.

To date you have failed to reclaim the area disturbed by your operations under notice serialized as case UTU-66354. All mailed notices of noncompliance requiring reclamation were returned as unclaimed.

A record of noncompliance means that you will have to file a plan of operations and a 100-percent reclamation bond with the BLM for all mining activity in excess of casual use conducted on BLM administered lands Nationwide. (The Bureau has an automated system which identifies operators with records of noncompliance.) You have the right to appeal the establishment of the record of noncompliance and bond amount to the Utah State Director, Bureau of Land Management, in accordance with 43 CFR 3809.4. If you exercise this right, your appeal, accompanied by a statement of reasons and any arguments you wish to present which would justify reversal or modification of the decision, must be filed in writing at this office within 30 days after the date of this decision. This decision will remain in effect during appeal unless a written request for a stay is granted.

The State Director has determined that the duration of your record of noncompliance is 3 years. The duration will not begin until all outstanding reclamation work required in the notice of noncompliance, dated December 5, 1990, has been satisfactorily completed and a bond posted for the remainder of the operation. A surety or personal surface management bond in the amount of \$14,000.00 must be furnished with the Utah State Office, (BLM), P.O. Box 45155, Salt Lake City, Utah 84145-0155, within 30 days of receipt of this letter. BLM surety and personal bond forms are enclosed for your use. If you have any questions about the type of bond being required, please contact Opolonia Abeyta at (801) 539-4123. Be sure to include your Notice serial number (U-66354) with any correspondence concerning a bond.

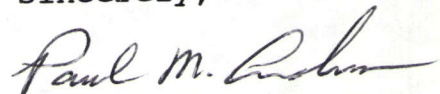
The decision regarding the duration of your record of noncompliance may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) [pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993)] for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on its merits,
- (3) The likelihood of immediate and irreparable harm if a stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Sincerely,



Paul M. Andrews
Vernal District Manager
Acting

Attachments:

BLM bond forms
Form 1842-1

cc: ✓ UDOGM (Tracking #S/047/048)
Utah State Office (UT-921)
Leo Snow (Prior Locator of Record, Sno-Ben #2 Claim UMC 282391)

RECLAMATION BOND INFORMATION

I. BOND GUARANTEES:

A bond is a financial guarantee, given to provide assurance to one party that another party will fulfill an obligation it has undertaken to perform. Bonds are not insurance. Under a bond, the principal, or obligor on a personal bond, is responsible to fulfill a contractual obligation. If the principal/obligor does not perform, the bond may be collected.

Personal bonds are contracts directly between the obligor and the obligee. A surety bond is written for the benefit of a third party, and is a three-way contract among the principal (owner of the bond), the surety (insurance company), and the obligee (the party to whom performance is promised). A bond may only be terminated or canceled with the consent of all parties to that bond.

II. TYPES OF BONDS: PERSONAL AND SURETY.

1. Corporate Surety Bonds. A surety bond consists of a promise by a principal and surety to the United States that the surety will correct any default should the principal not do so, paying up to the limits of the amount of the bond. A surety bond is a three-way contract between the principal, the surety, and the United States/State of Utah.
2. Personal Bonds. The principal (obligor) may furnish a personal bond in lieu of a surety bond to ensure compliance with all the terms and conditions of a plan of operations on public land. A personal bond must be accompanied by one of the following:
 - a. Letter of Credit (LOC). An irrevocable letter of credit issued by a bank organized to do business in the United States.
 - b. Certificate of Deposit (CD). Federally-insured certificate of deposit payable to the United States and the Utah State Division of Oil, Gas, and Mining.
 - c. Cashier's Check or Certified Check.

III. POSTING BONDS WITH THE BUREAU OF LAND MANAGEMENT.

Bonds required for disturbance of 5 acres or less. A surface management bond must be furnished with the Utah State Office, Bureau of Land Management (BLM). The bond is to cover operations conducted by or on behalf of the principal on the above-mentioned plan of operations. The BLM Surface Management Surety Bond form, UT Form 3041-1a, or Surface Management Personal Bond form, UT Form 3041-2a, must be used when posting bonds with the BLM.

Bonds required for disturbance of more than 5 acres. A surface management bond must be furnished with the Utah State Office, Bureau of Land Management (BLM), and/or the Utah State Division of Oil, Gas, and Mining (DOGM). The BLM and DOGM must be listed as joint owner/holder of that bond. The bond recommended by the BLM can be posted with the BLM. The BLM Surface Management Surety Bond form, UT Form 3041-1, or Surface Management Personal Bond form, UT Form 3041-2, must be used when posting bonds with the BLM with DOGM as joint holder. If DOGM has recommended an additional bond that must be posted with DOGM. If the principal wishes, a single bond in the amount of the total bond required between BLM and DOGM may be posted with DOGM; this will satisfy both the BLM and DOGM bond requirements. When filing bonds with DOGM, their contract forms must be used.

When filing bonds with the BLM, please contact Opolonia Abeyta at (801) 539-4123.

When filing bonds with the DOGM, please contact Wayne Hedberg or Tony Gallegos at (801) 538-5340.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

SURFACE MANAGEMENT SURETY BOND

Act of May 10, 1872, as amended (30 USC 22-54)
Act of October 21, 1976, as amended (43 USC 1732-35)
Act of September 13, 1982 (31 USC 9301 et seq.)
Act of October 18, 1986 (100 STAT 1783)
Act of October 30, 1986 (100 STAT 3341)
Act of September 27, 1988 (102 STAT 1776)

Plan of Operation Number:

KNOW ALL BY THESE PRESENTS, THAT:

_____ (name)

of _____

_____ (address)

as principal ; and _____

_____ (name)

of _____

_____ (address)

as surety ;

are held firmly bound unto the United States of America in the sum of

_____ dollars (\$ _____),

lawful money of the United States, which may be increased or decreased by a rider hereto executed in the same manner as this bond, for the payment of which sum the principal and surety bind themselves successors, and assigns, jointly and severally, by these presents.

The principal/surety shall apply this bond for the faithful performance of any and all of the conditions and stipulations as set forth in this bond, the plan of operations cited above, and the regulations at 43 CFR Subpart 3809. In the case of any default in the performance of the conditions and stipulations of such undertaking, it is agreed that surety/principal shall apply the bond or any portion thereof, to the satisfaction of any damages, reclamation, assessments, penalties, or deficiencies arising by reason of such default.

BOND CONDITIONS

1. WHEREAS the principal has an interest in a mining claim(s), mill site(s), or tunnel site(s) and/or responsibility for operations on the mining claim(s), mill site(s), tunnel site(s) or Public Lands under the Acts cited in this bond; and
2. WHEREAS the principal has received approval from the United States Department of the Interior of the plan of operations cited above, which plan of operations contain certain stipulations and conditions; and
3. WHEREAS the principal has promised to deliver to the United States a bond substantially in the form hereof upon the approval of the above referenced plan of operations by the United States Department of the Interior, Bureau of Land Management (BLM) to secure his/her performance of the terms and conditions contained in the plan of operations.
4. WHEREAS the principal and surety agree that, with notice to the surety, the coverage of this bond, in addition to the present holdings of and/or authorization(s) granted to the principal, shall extend to and include:
 - a. Any transfer of operating rights under the plan of operations hereafter entered into or acquired by the principal affecting mining claim(s), mill site(s), tunnel site(s), or the Public Lands; and
 - b. Any activity subsequent hereto of the principal as operator under a plan of operations issued pursuant to the Acts cited in this bond; and

Provided, that the surety may elect to terminate the additional coverage authorized under this paragraph. Such termination will become effective 30 days after the BLM receives notice of the election to terminate. After the termination becomes effective, the additional interests identified in this paragraph will not be covered by this bond; and

5. WHEREAS the principal and surety agree(s) that with notice to the surety that "Bond shall remain in full force and effect notwithstanding: Any assignment of an undivided interest in any part or all of the mining claim(s), mill site(s), tunnel site(s), or Public Lands covered by the plan of operations, in which event the assignee(s) shall be considered to be coprincipal(s) on this bond as fully and to the same extent as though his/her or their duly authenticated signatures appeared thereon; and

6. WHEREAS the principal/surety hereby waives any right to notice of, and agrees that this bond shall remain in full force and effect notwithstanding:

a. Any transfer(s) in whole or in part, of any or all of the land covered by the plan of operations and further agrees to remain bound under this bond as to the interests in the plan of operations retained by the principal; and

b. Any modification of the plan of operations or obligations thereunder as provided in paragraph 4 herein; and

7. WHEREAS the principal and surety hereby agree that notwithstanding the termination, cancellation, or relinquishment of any mining claim(s), mill site(s), or tunnel site(s) covered by this plan of operations, whether by operation of law or otherwise, the bond shall remain in full force and effect as to the terms and conditions of the plan of operations and obligations covered by this bond; and

8. WHEREAS should the surety elect to cancel this bond, the surety agrees to give the principal and the BLM 90 days written notice by certified mail, return receipt requested, at their respective addresses as stated herein. The surety further agrees that in the event of such cancellation this bond shall remain in full force and effect as to all areas within the plan of operations disturbed prior to the effective date of such cancellation, unless and until the principal shall file a substitute bond or other acceptable instrument to protect the interest of the BLM and such bond or instrument is accepted by the BLM; and

9. WHEREAS the principal and surety agree that in the event of any default under the plan of operations, the United States, through the BLM, may commence and prosecute any claim, suit, or other proceeding against the surety and principal, or either of them, without the necessity of joining the owner(s) of the mining claim(s), mill site(s), or tunnel site(s) covered by the plan of operations; and

10. WHEREAS if the principal fails to comply with any provisions of the plan of operations, and the noncompliance continues for 30 days after written notice thereof, such plan of operations shall be subject to suspension or cancellation under Section 302(c) of the Federal Land Policy and Management Act, as amended [43 USC 1732(c)], and the principal shall also be subject to the applicable provisions and penalties of Sections 303 and 305 of the Federal Land Policy and Management Act of 1976, as amended (43 USC 1733 and 1735). This provision shall not be construed to prevent the exercise by the United States of any other legal and equitable remedy, including waiver of the default; and

11. WHEREAS, on the faith of the foregoing promises, representations, and appointments and in consideration of this bond, the United States has approved the plan of operations referenced herein.

12. NOW, THEREFORE, the condition of this obligation is that if said principal, his/her heirs, executors, administrators, successors, or assigns shall, in all respects, faithfully comply with all of the provisions of the plan of operations and any amendments thereto, and the rules and regulations contained in 43 CFR Subpart 3809, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Signed this _____ day of _____, 19____, in the presence of:

Name and Address of Witness Principal (Seal)

By: _____
(Name & Title Typed)

Business Address: _____

Signature: _____

Name and Address of Witness Surety _____ (Seal)

By: _____
(Name & Title Typed)

Name and Address of Witness _____
Business Address: _____

Signature: _____

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

SURFACE MANAGEMENT PERSONAL BOND

Act of May 10, 1872, as amended (30 USC 22-54)
Act of October 21, 1976, as amended (43 USC 1732-35)
Act of September 13, 1982 (31 USC 9301 et seq.)
Act of October 18, 1986 (100 STAT 1783)
Act of October 30, 1986 (100 STAT 3341)
Act of September 27, 1988 (102 STAT 1776)

Plan of Operation Number:

KNOW ALL BY THESE PRESENTS, THAT:

_____ (name)

of _____

_____ (address)

as principal ; is held firmly bound unto the United States of America in the sum of

_____ dollars (\$ _____),

lawful money of the United States, which may be increased or decreased by a rider hereto executed in the same manner as this bond.

The principal, in order to more fully secure the United States in the payment of the aforesaid sum, hereby pledges as security therefore, United States negotiable securities of a par value equal to the amount specified, cash, irrevocable letter of credit from a Federal Reserve Bank, or other instrument acceptable to the Bureau of Land Management (BLM). The principal, pursuant to the authority conferred by Section 1 of the Act of September 13, 1982 (31 USC 9303), does hereby constitute and appoint the Secretary of the Interior to act as his attorney-in-fact for the purpose of negotiating the cash or securities. The interest accruing on the United States securities, cash, or other instruments given above, in the absence of any default in the performance of any of the conditions, or stipulations set forth in this bond, or the plan of operations, must be paid to the principal. The principal hereby for himself/herself, any heirs, executors, administrators, successors, and assigns, jointly and severally, ratifies and confirms whatever the Secretary shall do by virtue of these presents.

The Secretary shall transfer this deposit for the faithful performance of any and all of the conditions and stipulations as set forth in this bond, the plan of operations cited above, and the regulations at 43 CFR Subpart 3809. In the case of any default in the performance of the conditions and stipulations of such undertaking, it is agreed that the Secretary shall have full power to assign, appropriate, apply, or transfer the deposit, or any portion thereof, to the satisfaction of any damages, reclamation, assessments, penalties, or deficiencies arising by reason of such default.

BOND CONDITIONS

1. WHEREAS the principal has an interest in a mining claim(s), mill site(s), or tunnel site(s) and/or responsibility for operations on the mining claim(s), mill site(s), tunnel site(s) or Public Lands under the Acts cited in this bond; and
2. WHEREAS the principal has received approval from the United States Department of the Interior of the plan of operations cited above, which plan of operations contain certain stipulations and conditions; and
3. WHEREAS the principal hereby waives any right to notice of, and agrees that this bond shall remain in full force and effect notwithstanding:
 - a. Any transfer(s) in whole or in part, of any or all of the land covered by the plan of operations and further agrees to remain bound under this bond as to the interests in the plan of operations retained by the principal; and
 - b. Any modification of the plan of operations or obligations thereunder; and
4. WHEREAS the principal hereby agrees that notwithstanding the termination, cancellation, or relinquishment of any mining claim(s), mill site(s), or tunnel site(s) covered by this plan of operations, whether by operation of law or otherwise, the bond shall remain in full force and effect as to the terms and conditions of the plan of operations and obligations covered by this bond; and

5. WHEREAS the principal agrees that in the event of any default under the plan of operations, the United States, through the BLM, may commence and prosecute any claim, suit, or other proceeding against the principal, without the necessity of joining the owner(s) of the mining claim(s), mill site(s), or tunnel site(s) covered by the plan of operations; and

6. WHEREAS if the principal fails to comply with any provisions of the plan of operations, and the noncompliance continues for 30 days after written notice thereof, such plan of operations shall be subject to suspension or cancellation under Section 302(c) of the Federal Land Policy and Management Act, as amended [43 USC 1732(c)], and the principal shall also be subject to the applicable provisions and penalties of Sections 303 and 305 of the Federal Land Policy and Management Act of 1976, as amended (43 USC 1733 and 1735). This provision shall not be construed to prevent the exercise by the United States of any other legal and equitable remedy, including waiver of the default.

7. WHEREAS, on the faith of the foregoing promises, representations, and appointments and in consideration of this bond, the United States has approved the plan of operations referenced herein.

8. NOW, THEREFORE, the condition of this obligation is such that if said principal(s), his/her heirs, executors, administrators, successors, or assigns shall, in all respects, faithfully comply with all of the provisions of the plan of operations referenced herein, any amendments thereto, and the rules and regulations contained in 43 CFR Subpart 3809, then this obligation is void; otherwise it shall remain in full force and effect.

Signed this _____ day of _____, 19_____, in the presence of:

_____ Name and Address of Witness	_____ Principal (Seal)
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_____ Name and Address of Witness	By: _____ (Name & Title Typed)
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Business Address: _____

Signature: _____

_____ Name and Address of Witness	_____ Surety (Seal)
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_____ Name and Address of Witness	By: _____ (Name & Title Typed)
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Business Address: _____

Signature: _____